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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,015	07/09/2003	Thomas V. Wilder	DAREDEV.095A	1128

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KNOBBE MARTENS OLSON & BEAR LLP  
2040 MAIN STREET  
FOURTEENTH FLOOR  
IRVINE, CA 92614

EXAMINER

STASHICK, ANTHONY D

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 06/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/616,015

Applicant(s)

WILDER, THOMAS V.

Examiner

Anthony Stashick

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-27 and 31-34 is/are pending in the application.
- 4a) Of the above claim(s) 1-19 and 31-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 07092003.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Previously Mailed Office Action*

1. It is requested that applicant please disregard the Office action mailed on June 8, 2005. This Office action was mailed in error to the wrong applicant and therefore does not apply to applicant's application. The papers mailed June 8, 2005 have been removed from the system, as they do not apply to this application. Please accept the Office's apology for any inconvenience that this error may have caused.

### *Election/Restrictions*

2. Claims 1-19 and 31-34 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper filed March 28, 2005. In this paper, applicant elected Group III, claims 20-27 to be examined on the merits. Therefore, the other claims have been withdrawn as being non-elected. With respect to claims 31-34, applicant only states that these claims have been added to more fully recite subject matter that applicant considers to be part of the invention. However, applicant fails to elect these claims or say how these claims relate to the elected Group. Therefore, these claims have also been withdrawn without traverse and an Office action on the merits of claims 20-27 appears below.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 20-21 and 23-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Kelleher & Randlett 6,009 (Keller et al. '009). Keller et al. '009 discloses all the limitations of the claims including the following: providing a quarter panel B having a curved ankle edge forming a first curvature (see Figure 3); providing an ankle support panel A having a curved lower edge (see Figure 4, lower edge curved); the ankle support panel curved lower edge forming a second curvature that is different than the first curvature (See Figures 3 and 4, curves are different because complimentary curves are not the same curve); deforming (by bending, folding shaping to fasten together) at least one of the ankle edge and curved lower edge and the first curvature of the quarter panel curved ankle generally correspond to one another (see Figure 1); joining the ankle support panel at its curved lower edge to the quarter panel along its curved ankle edge (see Figure 1); the quarter panel is a lateral quarter panel (see Figures 3 and 1); providing a medial quarter panel joined to the lateral quarter panel at a heel counter (see Figures 3 and 1); the medial quarter panel having a curved ankle edge forming a third curvature (see Figure 3); the third curvature is generally the same as the first curvature (see Figure 3); the lateral and medial quarter panel curved ankle edges are generally continuous (as shown in Figure 3); the ankle support panel comprises a lateral portion and a medial portion (see Figure 4); joining the curved lower edge of the lateral portion of the ankle support panel to the curved ankle edge of the lateral quarter panel and joining the curved lower edge of the medial portion of the ankle support panel to the curved ankle edge of the medial quarter panel (see Figure 1).

*Claim Rejections - 35 USC § 103*

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kelleher & Randlett 6,099 (Kelleher et al. '099) as applied to claim 21 above. Kelleher et al. '099 discloses all the limitations of the claims except for the third curvature being different than the first. Since the curvatures of the quarter panels needs to match up with that of the ankle support panels, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to make the curvature of the panels to match so as to be able to easily connect to each other, i.e. the edges being complimentary.

7. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kelleher & Randlett 6,099 (Kelleher et al. '099) as applied to claim 20 above in view of McDonald 5,784,809. Kelleher et al. '099 discloses all the limitations of the claims except a heel counter stiffener having an upper edge that is generally aligned with the quarter panel curved ankle edges and providing a counter seam configured so that the upper edge is biased generally inwardly. McDonald '809 teaches that a boot can have a heel counter 32 attached to the heel and having an upper edge aligned with the quarter panel (see Figure 1) and provides a seam that is biased generally inward (see Figures 2 and 3) to allow for the heel counter to better support and conform to the user's foot. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to place a heel counter, such as that taught by McDonald '809, on

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the upper of Kelleher et al. '099, to aid in supporting and protecting the user's foot within the shoe.

8. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kelleher & Randlett 6,099 as applied to claim 20 above in view of Bussell et al. 5,775,008.

Kelleher et al. '099 discloses all the limitations of the claim except for the ankle stiffener and securing the ankle stiffener adjacent the ankle support panel with the stiffener having an aperture generally corresponding to a malleolar portion of the ankle. Bussell et al.

'008 teaches that an ankle support panel stiffener (made of struts 42, 44) can be attached to the interior of the upper to support the ankle during use. The panel can have an opening 50 for the ankle to relieve the ankle while still giving support to the user's foot.

Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to place an ankle support, such as that taught by Bussell et al. '008, in the upper of Kelleher et al. '099 to aid in supporting the user's ankle and allow ease of flexion during use of the boot.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and are cited on form 892 enclosed herewith.

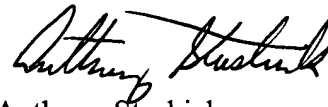
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Stashick whose telephone number is 571-272-4561. The examiner can normally be reached on Monday-Thursday 8:30 am to 4:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Anthony Stashick  
Primary Examiner  
Art Unit 3728

ADS